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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,561

02/17/2006

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EXAMINER

MI, QIUWEN

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

09/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/568,561	Applicant(s) GIAVEDONI ET AL.	
	Examiner QIUWEN MI	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/26/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-8 are pending. **Claims 1-8 are examined on the merits.**

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites “preferably consisting of aqueous gels and spongy, porous materials such as porous stone and foamed polymers...”. the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tymchuck et al (US 4,189,868) in view of Bowden et al (US PP13,486 P2), and further in view of Gurevich (WO 02060493 A1).

Tymchuck et al a package combination for storing and preserving a living plant such as lettuce. A bag, formed of a plastic material (see graph on page 1, thus packaging material has a transparency which allows exposure of the plant to light and which allows visual inspection of the plant's freshness, allowing only protruding the stem of the plant with its leaves through a narrow opening), is inflated with a gaseous medium. A living plant having an absorbent block attached to its root system, is placed within the bag in such a manner that the block absorbs moisture which condenses within the bag, and makes it available to the plant (see Abstract). Tymchuck et al also teach that the present invention is relates to the packaging of perishable fresh products, and more specifically, to the packaging of living plants, such as lettuce and other perishable vegetables (thus edible), flowers, and the like, in a refrigerated environment. A further object is to provide improved packaging means for living plants in which moisture loss and plant wilting is minimized (col 2, lines 25-30). Tymchuck et al further teach that the invention comprises a pouch or bag formed of a flexible, gas impervious plastic film material, which is capable of being sealed so that it can be inflated with a gaseous medium (thus watertight). A food product (thus a meal kit), such as a living lettuce plant, is positioned within the pouch with at least a portion of its root system intact (thus a moisture donating source consisting of spongy,

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porous materials). A root supporting block is attached to the root system of the plant; such block being formed of a moisture absorbing and retaining material. Proper positioning of the plant and its attached absorbent block within the pouch, enables such block to absorb moisture which condenses within the pouch, thus prolonging the shelf life of the food product (col 2, lines 34-47).

Tymchuck et al do not teach a meal kit comprising at least two separate items, neither do Tymchuck et al teach the plant basil, or sterilized moisture donating source.

Bowden et al teach that basil is commonly used in cooking in either a fresh or dried form. Recently, the demand for fresh basil has greatly increased. Not only has there been a general trend in cooking to use fresh ingredients, but modern cooks are discovering the taste advantages of using fresh herbs such as basil (col 1, lines 11-16). Bowden et al also teach that once the basil tops have been harvested, they are refrigerated and packaged. The refrigerated packages are shipped to commercial market outlets where they are sold. Once the basil tops have been harvested from the sweet Italian basil plants, the basil tops can deteriorate rapidly by wilting and turning black. Within a few days after harvesting, the harvested basil tops typically have deteriorated to the point they are no longer fit for sale. Once the basil has deteriorated beyond a point of marketability, it must be discarded by the commercial outlet, thereby being a total economic loss. Sweet Italian basil typically must be sold within only four days after harvest (col 2, 21-34).

Gurevich teaches a method for protecting plants to be grown which are sensitive to disease, the cultivation of which requires the killing of bacteria and other harmful organisms, by sterilizing the topsoil intended for cultivation (page 1, 1st paragraph). The method eliminates

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bacteria, fungi, viruses and nematodes found in the topsoil, while at the same time irrigating the soil. The result is that for moderate expenditure plant disease originating in organic inclusions are prevented, greatly increasing the value of the crop (page 5, last paragraph). The method of the present invention can be applied in any weather above freezing, and in any location, in contradistinction to some other methods which require specific temperatures or location (page 6, 1st paragraph).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to including basil in the living plant kit as Bowden et al teach not only has there been a general trend in cooking to use fresh ingredients, but modern cooks are discovering the taste advantages of using fresh herbs such as basil, basil tops can deteriorate rapidly by wilting and turning black. Therefore, it would be obvious for one of ordinary skill in the art to would have been motivated to include basil in the meal kit.

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to sterilize the soil for cultivation as Gurevich teaches it eliminates bacteria, fungi, viruses and nematodes found in the topsoil, and greatly increases the value of the crop. Therefore, it would be obvious for one of ordinary skill in the art would have been motivated to use sterilized soil as a moisture donating source in the meal kit.

Regarding the limitation to the amount of the items in the meal kit, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection

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and routine optimization which is well within the purview of the skilled artisan, which is dependent on mail order of customer that is needed.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Michele Flood/
Primary Examiner, Art Unit 1655